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Associated Milk Producers, Inc. and Chauffeurs, Teamsters and Helpers, Local Union No. 238, affiliated with the International Brotherhood of Teamsters. Case 18-CA-14945

September 30, 1998

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

Pursuant to a charge filed on August 5, 1998, the Acting General Counsel of the National Labor Relations Board issued a complaint on August 12, 1998, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 18-RC-16204. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, asserting affirmative defenses.

On September 2, 1998, the Acting General Counsel filed a Motion for Summary Judgment. On September 3, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's disposition of certain challenged ballots in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Kansas corporation with principal office and place of business located in Arlington, Iowa, has been engaged in the production and non-retail sale and distribution of dairy products. During the calendar year ending December 31, 1997, the Respondent, in conducting its business operations described above, purchased and received at its Arlington, Iowa facility goods and products valued in excess of \$50,000 directly from points outside the State of Iowa and sold and shipped from its Arlington, Iowa facility, goods valued in excess of \$50,000 directly to points outside the State of Iowa.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held January 23, 1998, the Union was certified on February 13, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees, including lead persons, operators, baggers, sanitation workers, truck mechanics, milk quality technicians, maintenance workers, local drivers, bulk truck drivers and waste water operator employed at its Arlington, Iowa facility; excluding all over-the-road drivers, milk quality lab clerical employees, other clerical employees, salespersons, professional employees, guards and supervisors, as defined by the National Labor Relations Act, as amended.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since July 27 and August 11, 1998, the Union, by letters, has requested the Respondent to bargain, and, since July 27, 1998, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after July 27, 1998, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Associated Milk Producers, Inc., Arlington, Iowa, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Chauffeurs, Teamsters and Helpers, Local Union No. 238, affiliated with the International Brotherhood of Teamsters, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production and maintenance employees, including lead persons, operators, baggers, sanitation workers, truck mechanics, milk quality technicians, maintenance workers, local drivers, bulk truck drivers and waste water operator employed at its Arlington, Iowa facility; excluding all over-the-road drivers, milk quality lab clerical employees, other clerical employees, salespersons, professional employees, guards and supervisors, as defined by the National Labor Relations Act, as amended.

(b) Within 14 days after service by the Region, post at its facility in Arlington, Iowa, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms

provided by the Regional Director for Region 18 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 27, 1998.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 1998

Sarah M. Fox,	Member
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Peter J. Hurtgen,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER BRAME, dissenting.

In the underlying representation proceeding, I dissented from my colleagues' denial of the Employer's request for review of the Regional Director's Supplemental Decision and Certification of Representative. In his decision, the Regional Director sustained the challenges to the ballots of the three employees who worked out of the Employer's Fredericksburg, Iowa facility, finding that their positions were not included in the stipulated unit. Accordingly, as I would have granted the Employer's request for review in the underlying representation proceeding, I dissent here from my colleagues' finding that the Employer violated Section 8(a)(5) of the Act in this certification-testing proceedings.

Dated, Washington, D.C. September 30, 1998

J. Robert Brame III,	Member
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NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Chauffeurs, Teamsters and Helpers, Local Union No. 238, affiliated with the International Brotherhood of Teamsters, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time production and maintenance employees, including lead persons, operators, baggers, sanitation workers, truck mechanics, milk quality technicians, maintenance workers, local drivers, bulk truck drivers and waste water operator employed at our Arlington, Iowa facility; excluding all over-the-road drivers, milk quality lab clerical employees, other clerical employees, salespersons, professional employees, guards and supervisors, as defined by the National Labor Relations Act, as amended.

ASSOCIATED MILK PRODUCERS, INC.